

**REMARKS/ARGUMENTS**

1. Claim 1 is rejected. Claim 1 is cancelled.

2. Claim 2 is rejected under 35 U.S.C. §102(e) as anticipated by O'Brien. This basis for rejection is traversed as to claim 2 as amended.

More particularly, Examiner states (Page 3 of the Office Action) that O'Brien discloses "the step of amending said header component of said policy enforcement agent portion of said combined program to match the characteristics of said combined program (O'Brien: column 2 lines 12-38 . . .)" O'Brien makes no reference whatever to a "header," and thus cannot possibly anticipate the recitations of claim 2 as amended.

Examiner's states that a "software wrapper is known to change the start-up code section of a software or program." This statement suggests that Examiner is relying on §103 instead of §102 for the rejection, and should be citing another reference. However, it is not necessary to go so far in order to show that claim 2 as amended is patentable. The recitations of claim 2 as amended include inter alia

"encapsulating said executable application with said policy enforcement agent without changing said executable application, to thereby produce a combined program;"

which clearly distinguishes from O'Brien. Thus, even accepting Examiner's statement, Claim 2 as amended distinguishes over O'Brien, and is patentable in either a §102 or §103 sense thereover.

3. Claim 3 is rejected under 35 U.S.C. § 103(a) as unpatentable over O'Brien and further in view of Kayashima et al. and Eggebraaten et al.

It is well established that there must be some proper nexus for Examiner's suggested combination of references, and that it is insufficient to establish such a proper nexus that the references are in the same art area. Examiner must show by the use of logic and science that such suggested combination would have been obvious to one skilled in the art, or there must instead be some suggestion in at least one of the references to form the combination. This latter requirement is the equivalent of saying that patentability is not adversely impacted by the mere existence in the prior art of elements of the claimed invention. In the present case, the O'Brien method is used to limit damage to the wrapped commercial software in the event of a successful attack (column 2, lines 12-16). This presupposition of a successful attack presupposes that all defenses, including antivirus software, have failed. Consequently, the underlying scenario of the O'Brien method would not be aided in the least by running antivirus software, and a person skilled in the art would not go to other references seeking an antivirus application.

There is no suggestion in Kayashima or in Eggebraaten to condition the running of a VPN program on the running of an antivirus program, and such suggestion is clearly not appropriate for O'Brien. Consequently, there is no proper nexus for Examiner's suggested combination of O'Brien with Kayashima et al. and Eggebraaten et al., and the suggested combination may not be made. More generally,

the mere fact that the VPN and antivirus elements of claim 3 are found in the prior art does not make it obvious to combine them with O'Brien.

Claim 3 is therefore independently patentable in a § 103 sense over Examiner's suggested combination of O'Brien, Kayashima et al. and Eggebraaten et al. Claim 3 is also patentable as depending from patentable claim 2.

4. Claim 4 is rejected under 35 U.S.C. § 103(a) as unpatentable over O'Brien and further in view of Kayashima et al., Eggebraaten et al., and Wolff et al..

Claim 4 recites inter alia

"wherein said executable application includes a VPN-tunnel-generating application, and said step of satisfying said conditions includes the step of running an antivirus program having an acceptable update status."

Examiner relies on Wolff et al. as disclosing

"virus event report that shows update status and it allows virus definition data updates to be downloaded by user or as part of a regular scheduled process" which, even if accepted at face value, is irrelevant to the recitations of claim 4.

Claim 4 as amended is prima facie patentable as depending from a patentable parent claim, and is also independently patentable over Examiner's suggested combination of O'Brien, Kayashima et al., Eggebraaten et al., and Wolff et al..

5. Claim 5 is rejected under 35 U.S.C. § 103(a) as unpatentable over O'Brien and Kayashima et al. As mentioned above, O'Brien is predicated on failure of the security to protect, so the invoking of a firewall makes no sense in O'Brien's context. Thus, there is no logical connection or nexus between Kayashima et al. and O'Brien which would provide a suitable nexus for Examiner's suggested combination of references. In the absence of a proper nexus, the suggested combination cannot be made, and the rejection fails.

Thus, claim 5 depends from a patentable parent claim and is patentable for that reason alone, and it is also independently patentable as not being suggested by any combination of references having a proper nexus. Claim 5 is patentable.

6. Claims 6, 7, and 8 are rejected under 35 U.S.C. §103(a) as unpatentable over O'Brien in view of other references. Claims 6, 7, and 8 depend from patentable parent claims, and are patentable for that reason alone. Also, in each case, there does not appear to be exposition of a proper nexus for Examiner's suggested combination of references. That is to say, that nothing in O'Brien appears to suggest going to the ancillary references, and the ancillary references themselves appear to show nothing more than that the prior art contains some subject matter which is found in the claims. Claims 6, 7, and 8 are patentable.

7. Claims 9 and 10 are rejected. Claim 9 is cancelled, and claim 10 is amended to include all the

limitations of claim 9. As amended, claim 10 recites inter alia

"appending said executable application to said software control element in a location identified by said software control element as a data location; and updating said header of said software control module to correspond with the characteristics of said combined program."

O'Brien makes no mention of the header or to the data locations relative to the header. Cooper relates to digital certificates, which are inapposite to claim 10. Claim 10 as amended is patentable over O'Brien in view of Cooper et al.

8. Reconsideration and allowance are requested of claims 1-8 and 10 as amended.

9. No fee is believed to be required for this amendment. Please charge any other fees to deposit account 50-2061.

FOR THE APPLICANT(S)

by 

William H. Meise  
Attorney for Applicant  
Reg. No. 27,574

January 10, 2005  
Duane Morris LLP  
P.O. Box 5203  
Princeton, NJ 08543-5203  
609-631-2453